

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 286

Introduced by Senator Hertzberg

February 19, 2015

An act to amend Section 365.1 ~~of~~ *of, and to add Section 395.5 to,* the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 286, as amended, Hertzberg. Electricity: direct transactions.

The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. Existing law, enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law suspended the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, as defined, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law. Existing law continues the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions. Existing law requires the commission to authorize direct transactions for nonresidential end-use customers subject to a reopening schedule that will phase in over a period of not less than 3 years and not more than 5 years, and is subject to an annual maximum allowable

total kilowatthour limit established, as specified, for each electrical corporation.

The California Renewables Portfolio Standard Program requires a retail seller, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers procure a balanced portfolio of electricity products from eligible renewable energy resources, as specified.

This bill would require the commission to adopt and implement a schedule that implements a 2nd phase-in period for expanding direct transactions over a 3-year period so that by the end of the 3-year period all nonresidential end-use customers may acquire electric service from other providers in each electrical corporation's distribution service territory. for individual retail nonresidential end-use customers over a period of not more than 3 years, raising the allowable limit of kilowatthours that can be supplied by other providers in each electrical corporation's distribution service territory to 2 times the amount determined by the commission for the first phase-in period. The bill would require the commission to ensure that 51% of the new direct transactions are for electricity products from eligible renewable energy resources. The bill would require that an electrical corporation continue to provide direct access customers with support functions, as specified, through its own employees, except that construction of distribution system equipment and line clearance tree trimming may be performed under contract with the electrical corporation. The bill would prohibit an electric service provider from offering consolidated billing beginning January 1, 2016.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the operation of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) As the state's electrical system evolves to include more*
4 *electricity generated by eligible renewable energy resources and*
5 *distributed generation, electrical corporations must continue to*
6 *facilitate safe and reliable transactions for electricity. Whether it*
7 *comes from efficient natural gas powerplants, large wind or solar*
8 *facilities, or customer-owned generation, including rooftop*
9 *photovoltaics, fuel cells, or combined heat and power systems, the*
10 *role of electrical corporations will be to ensure that electricity*
11 *moves from suppliers to customers. In effect, the electrical*
12 *corporations will become transmission and distribution companies,*
13 *connecting customers with the electrical mix they want when and*
14 *where they need it.*

15 *(b) California already has a few examples for this business*
16 *model, including community choice aggregation and direct access.*
17 *Direct access allows a customer to receive electricity through a*
18 *direct transaction with an electric service provider, rather than*
19 *from the electrical corporation. The electricity is delivered over*
20 *the electrical corporation's transmission and distribution grid and*
21 *the direct access customer pays the utility for providing*
22 *transmission and distribution service.*

23 *(c) Direct access was suspended in California in 2001, despite*
24 *not being a contributing component to the market manipulation,*
25 *blackouts, and price spikes that led to the energy crisis of 2000–01.*
26 *In 2010, the right of individual retail nonresidential end-use*
27 *customers to acquire electric service through a direct transaction*
28 *was reopened, but subject to limitations on the amount of electricity*
29 *that could be delivered through those transactions.*

30 *(d) Direct access customers currently pay charges for electrical*
31 *grid maintenance and pay nonbypassable charges on the*
32 *distribution of electricity to support public purpose programs,*
33 *including the California Alternate Rates for Energy program,*

1 *which supports affordable electric service for low-income*
2 *customers, and energy efficiency programs. Other providers of*
3 *electric service, including electric service providers and community*
4 *choice aggregators, are required to follow the same laws, rules,*
5 *and regulations as electrical corporations with respect to resource*
6 *adequacy (Section 380 of the Public Utilities Code), procurement*
7 *of electricity pursuant to the California Renewables Portfolio*
8 *Standard Program (Article 16 (commencing with Section 399.11)*
9 *of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code),*
10 *and for reducing emissions of greenhouse gases pursuant to the*
11 *California Global Warming Solutions Act of 2006 (Division 25.5*
12 *(commencing with Section 38500) of the Health and Safety Code).*

13 *(e) The Public Utilities Commission is required to ensure local*
14 *area reliability needs for the benefit of both bundled and unbundled*
15 *electric service customers. If the commission determines that new*
16 *resources are needed for reliability, the costs are to be shared*
17 *equitably, on a fully nonbypassable basis, amongst all customers,*
18 *whether the customer receives their electricity from the electrical*
19 *corporation, a community choice aggregator, or an electric service*
20 *provider. The cost allocation mechanism ensures that there is no*
21 *cost shift to bundled customers of the electrical corporation.*

22 *(f) A growing number of businesses are recognizing the*
23 *importance of managing their energy supplies and are seeking*
24 *more control over their energy management decisions. Many of*
25 *these businesses also want options to contract for electricity, with*
26 *up to 100 percent of that electricity coming from eligible renewable*
27 *energy resources. However, because of the statutory limitations*
28 *placed upon direct transactions, most businesses lack the means*
29 *and necessary tools to make cost-effective energy decisions, which*
30 *makes California less business friendly than other states with more*
31 *direct access options.*

32 *(g) Given high demand for direct transactions, it is in the interest*
33 *of the state to expand the right to direct access opportunities,*
34 *especially to provide options for acquiring electricity from*
35 *renewable sources of generation.*

36 **SECTION 1.**

37 **SEC. 2.** Section 365.1 of the Public Utilities Code is amended
38 to read:

39 365.1. (a) Except as expressly authorized by this section, and
40 subject to the limitations in subdivisions (b) and (c), the right of

1 retail end-use customers pursuant to this chapter to acquire service
2 from other providers is suspended until the Legislature, by statute,
3 lifts the suspension or otherwise authorizes direct transactions. For
4 purposes of this section, “other provider” means any person,
5 corporation, or other entity that is authorized to provide electric
6 service within the service territory of an electrical corporation
7 pursuant to this chapter, and includes an aggregator, broker, or
8 marketer, as defined in Section 331, and an electric service
9 provider, as defined in Section 218.3. “Other provider” does not
10 include a community choice aggregator, as defined in Section
11 331.1, and the limitations in this section do not apply to the sale
12 of electricity by “other providers” to a community choice
13 aggregator for resale to community choice aggregation electricity
14 consumers pursuant to Section 366.2.

15 (b) (1) ~~The~~ *During the first phase-in period for expanding*
16 *access to direct transactions, the* commission shall allow individual
17 retail nonresidential end-use customers to acquire electric service
18 from other providers in each electrical corporation’s distribution
19 service territory, up to a maximum allowable total kilowatthours
20 annual limit. ~~During the~~ *this* first phase-in period for expanding
21 access to direct transactions, the maximum allowable annual limit
22 shall be established by the commission for each electrical
23 corporation at the maximum total kilowatthours supplied by all
24 other providers to distribution customers of that electrical
25 corporation during any sequential 12-month period between April
26 1, 1998, and the effective date of this section. Within six months
27 of the effective date of this section, or by July 1, 2010, whichever
28 is sooner, the commission shall adopt and implement a reopening
29 schedule that commences immediately and will phase in the
30 allowable amount of increased kilowatthours over a period of not
31 less than three years, and not more than five years, raising the
32 allowable limit of kilowatthours supplied by other providers in
33 each electrical corporation’s distribution service territory from the
34 number of kilowatthours provided by other providers as of the
35 effective date of this section, to the maximum allowable annual
36 limit for that electrical corporation’s distribution service territory.
37 The commission shall review and, if appropriate, modify its
38 currently effective rules governing direct transactions, but that
39 review shall not delay the start of the phase-in schedule.

1 (2) ~~By July 1, 2016, the~~ *The* commission shall adopt and
2 implement a second direct transactions reopening schedule that
3 commences ~~immediately and will phase~~ *January 1, 2016, and*
4 ~~phases~~ in new direct transactions *for individual retail*
5 ~~nonresidential end-use customers~~ over a period of not more than
6 three years, raising the allowable limit of kilowatthours *that can*
7 ~~be~~ supplied by other providers in each electrical corporation's
8 distribution service territory ~~from that in effect as of the conclusion~~
9 ~~of the first phase-in period, so that at the conclusion of the~~
10 ~~three-year period, all nonresidential end-use customers may acquire~~
11 ~~electric service from other providers in each electrical corporation's~~
12 ~~distribution service territory. At the conclusion of the second~~
13 ~~phase-in period, there will cease to be any maximum allowable~~
14 ~~annual limit of kilowatthours that can be supplied by other~~
15 ~~providers to nonresidential end-use customers in each electrical~~
16 ~~corporation's distribution service territory.~~ *to two times the amount*
17 ~~determined by the commission for the first phase-in period. Not~~
18 ~~less than 51 percent of the new direct transactions shall be for~~
19 ~~electricity products from eligible renewable energy resources. For~~
20 ~~purposes of this section, "eligible renewable energy resource"~~
21 ~~has the same meaning as in the California Renewables Portfolio~~
22 ~~Standard Program (Article 16 (commencing with Section 399.11)).~~

23 (c) Once the commission has authorized additional direct
24 transactions pursuant to subdivision (b), it shall do both of the
25 following:

26 (1) Ensure that other providers are subject to the same
27 requirements that are applicable to the state's three largest electrical
28 corporations under any programs or rules adopted by the
29 commission to implement the resource adequacy provisions of
30 Section 380, the renewables portfolio standard provisions of Article
31 16 (commencing with Section 399.11), and the requirements for
32 the electricity sector adopted by the State Air Resources Board
33 pursuant to the California Global Warming Solutions Act of 2006
34 (Division 25.5 (commencing with Section 38500) of the Health
35 and Safety Code). This requirement applies notwithstanding any
36 prior decision of the commission to the contrary.

37 (2) (A) Ensure that, in the event that the commission authorizes,
38 in the situation of a contract with a third party, or orders, in the
39 situation of utility-owned generation, an electrical corporation to
40 obtain generation resources that the commission determines are

1 needed to meet system or local area reliability needs for the benefit
2 of all customers in the electrical corporation's distribution service
3 territory, the net capacity costs of those generation resources are
4 allocated on a fully nonbypassable basis consistent with departing
5 load provisions as determined by the commission, to all of the
6 following:

7 (i) Bundled service customers of the electrical corporation.

8 (ii) Customers that purchase electricity through a direct
9 transaction with other providers.

10 (iii) Customers of community choice aggregators.

11 (B) If the commission authorizes or orders an electrical
12 corporation to obtain generation resources pursuant to subparagraph
13 (A), the commission shall ensure that those resources meet a system
14 or local reliability need in a manner that benefits all customers of
15 the electrical corporation. The commission shall allocate the costs
16 of those generation resources to ratepayers in a manner that is fair
17 and equitable to all customers, whether they receive electric service
18 from the electrical corporation, a community choice aggregator,
19 or an electric service provider.

20 (C) The resource adequacy benefits of generation resources
21 acquired by an electrical corporation pursuant to subparagraph (A)
22 shall be allocated to all customers who pay their net capacity costs.
23 Net capacity costs shall be determined by subtracting the energy
24 and ancillary services value of the resource from the total costs
25 paid by the electrical corporation pursuant to a contract with a
26 third party or the annual revenue requirement for the resource if
27 the electrical corporation directly owns the resource. An energy
28 auction shall not be required as a condition for applying this
29 allocation, but may be allowed as a means to establish the energy
30 and ancillary services value of the resource for purposes of
31 determining the net costs of capacity to be recovered from
32 customers pursuant to this paragraph, and the allocation of the net
33 capacity costs of contracts with third parties shall be allowed for
34 the terms of those contracts.

35 (D) It is the intent of the Legislature, in enacting this paragraph,
36 to provide additional guidance to the commission with respect to
37 the implementation of subdivision (g) of Section 380, as well as
38 to ensure that the customers to whom the net costs and benefits of
39 capacity are allocated are not required to pay for the cost of
40 electricity they do not consume.

(d) (1) If the commission approves a centralized resource adequacy mechanism pursuant to subdivisions (h) and (i) of Section 380, upon the implementation of the centralized resource adequacy mechanism the requirements of paragraph (2) of subdivision (c) shall be suspended. If the commission later orders that electrical corporations cease procuring capacity through a centralized resource adequacy mechanism, the requirements of paragraph (2) of subdivision (c) shall again apply.

(2) If the use of a centralized resource adequacy mechanism is authorized by the commission and has been implemented as set forth in paragraph (1), the net capacity costs of generation resources that the commission determines are required to meet urgent system or urgent local grid reliability needs, and that the commission authorizes to be procured outside of the Section 380 or Section 454.5 processes, shall be recovered according to the provisions of paragraph (2) of subdivision (c).

(3) Nothing in this subdivision supplants the resource adequacy requirements of Section 380 or the resource procurement procedures established in Section 454.5.

(e) The commission may report to the Legislature on the efficacy of authorizing individual retail end-use residential customers to enter into direct transactions, including appropriate consumer protections.

(f) An electrical corporation shall continue to provide direct access customers with support functions, including, but not limited to, billing, customer service, call centers, support services, and line clearance tree trimming, through its own employees, except that construction of distribution system equipment and line clearance tree trimming may be performed pursuant to contracts between the electrical corporation and another entity.

SEC. 3. Section 395.5 is added to the Public Utilities Code, to read:

395.5. Beginning January 1, 2016, no electric service provider shall offer consolidated billing.

~~SEC. 2.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

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